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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,785	09/26/2001	Gary K. Loda	SUREB-58450	3304
39607	7590	09/29/2005	EXAMINER	
PETER K HAHN LUCE, FORWARD, HAMILTON, SCRIPPS, LLP. 600 WEST BROADWAY SUITE 2600 SAN DIEGO, CA 92101			JASTRZAB, KRISANNE MARIE	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 09/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/964,785

Applicant(s)

LODA ET AL.

Examiner

Krisanne Jastrzab

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34,35,47 and 48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 34-35, 47-48 is/are rejected.
- 7) ☒ Claim(s) 35 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claim 35 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The sole limitation of claim 35 already appears to be recited in the last paragraph of claim 34. Clarification is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

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the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 34-35 and 47-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kottler et al., U.S. patent No. 6,504,898 B1 in view of Bergeret et al., U.S. patent No. 4,852,138.

Kottler et al., clearly teach a method and apparatus for optimizing the irradiation of products wherein maximum and minimum dose rates are determined for the given geometry, such as thickness, of the product to be treated and the intensity of the radiation applied is modified such that the entire product receives the optimal amount of radiation consistently. The modification of the radiation is achieved by means adjustably modulating the shape of the radiation generated. See column 1, lines 20-25, column 3, lines 10-15, column 4, lines 1-15 and 40-50, column 7, lines 25-35, column 8, lines 14-47, column 9, lines 25-60, and column 12, lines 60-68.

Bergeret et al., teach a method and apparatus for optimizing the irradiation of products to control the max/min radiation dose received which includes the teaching that irradiation can be performed in any known manner, either a cylindrical source with the products being rotated such that all sides are irradiated, or a two source configuration where the products are passed there between such that opposite sides

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are controllably irradiated. Bergeret et al., further teach that a larger number of products can be processed with a two source panel system, then a cylindrical system because the total quantity of products that can be irradiated simultaneously is larger. See column 2, lines 56-68, column 3, lines 1-23 and lines 65-68, column 4, lines 1-16, column 5, lines 32-38 and claim 2.

It would have been well within the purview of one of ordinary skill in the art to substitute two sources for irradiation as taught in Bergeret et al., in the system of Kottler et al., because it would allow for the simultaneous treatment of a larger number of products while maintaining the dose control functions.

Response to Arguments

Applicant's arguments with respect to claims 34-35 and 47-48 have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues that Kottler et al., fail to teach two radiation sources on opposite sides of the product, however, the Examiner would maintain that Bergeret et al., teach two such sources and provide proper motivation to one of ordinary skill in the art to employ those in Kottler et al.

Applicant again argues that Kottler fails to teach or suggest reducing the intensity of the radiation, however, the Examiner would disagree. Kottler teaches dynamic modulation of the intensity of the radiation applied to a product in order to maintain a desired, uniform dose rate for the entire product, that dose rate having pre-determined maximum and minimum parameters. The modulation taught in Kottler inherently

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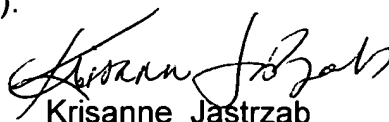
requires reducing the intensity if dose rates are detected that exceed the desired dose rate. Figure 12 (d) specifically graphs the intensity control. See column 7, lines 20-45 for the description of the maximum, minimum and desired uniform dose rates, and column 10, lines 41-44, column 11, line 13 through column 12, line 8, column 13, lines 35-40, column 15, lines 9-12 and column 16, lines 6-15, describing the modulation of the intensity or power of the radiation beam.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisanne Jastrzab whose telephone number is 571-272-1279. The examiner can normally be reached on Mon.-Wed. 6:30am-4:00pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on 571-272-1142. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Krisanne Jastrzab

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Primary Examiner
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September 27, 2005